

**BEFORE THE MINNESOTA
BOARD OF MARRIAGE AND FAMILY THERAPY**

In the Matter of
Gary J. Brink, LMFT
License No. 1210

**STIPULATION AND
CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by Gary J. Brink, LMFT ("Licensee"), and the Minnesota Board of Marriage and Family Therapy ("Board") Complaint Panel ("Panel") as follows:

1. During all times herein, Licensee has been and now is subject to the jurisdiction of the Board from which he holds a license to practice marriage and family therapy in the State of Minnesota.

FACTS

2. For the purpose of this stipulation, the Board may consider the following facts as true:

a. Between 2004 and 2006 Licensee made sexually inappropriate comments to a female client (Client #1) during therapy sessions. These comments included Licensee telling Client #1 her collarbones looked nice in a shirt she was wearing; commenting on how lucky her husband was to have a "wife like her because she was hot;" stating "I wish I could run with you. If I did, I'd run behind you;" and asking if her husband looks her in the eye when he orgasms. Client #1's husband reported feeling as though Licensee was trying to win her affections during a marriage counseling session, that Licensee had other motives in therapy, and that he felt attacked by Licensee during the session. Client #1 told Licensee she was "developing a crush on him" and asked if she should be seeing someone else due to those feelings. Licensee responded

"Nope, you're fine. I don't think that that's necessary." Licensee advised Client #1 her marriage would never work. When Client #1 terminated therapy, Licensee was visibly upset and accused her of being "co-dependent."

b. Between 2008 and 2011 Licensee engaged in a dual relationship with a wife (Client #2) and husband (Client #3) and made sexually inappropriate comments to Client #2 as follows:

1) Throughout 2009, while providing marriage counseling services to Clients #2 and #3, Licensee initiated and maintained a personal friendship with the two. Licensee indicated they would "love to meet Licensee's wife," would "become great friends," eventually "grow old together," and that he was "anxious" to stop seeing them professionally so that they could continue a "lifelong friendship." Licensee initiated fishing trips with Client #3. Clients #2 and #3 attended Licensee's daughter's graduation party at Licensee's home. Licensee invited them to his lake cabin.

2) Throughout the course of Licensee's therapy with Client #2, he complimented her on her physical shape and how good she looked in what she was wearing. Licensee described to Client #2 how good she had looked in her bikini when she had been at his lake cabin. Licensee asked Client #2 to wear a certain tight shirt the next time she came to his office. Licensee caressed Client #2's arm in a way that made her feel uncomfortable, violated, and emotionally disturbed. After their last session, Licensee called Client #2 approximately four times. Licensee left messages asking if everything was okay and that he had been thinking about their time at his lake cabin. In response to an e-mail from Client #2 describing why she was not returning his phone calls, Licensee wrote back seeking forgiveness and admitting what he had done was wrong.

c. On August 27, 2007, in Olmstead County District Court, Licensee pled guilty to Driving While Intoxicated for an incident occurring on August 25, 2007.

d. On August 20, 2009, in Goodhue County District Court, Licensee pled to gross misdemeanor Driving While Intoxicated for an incident occurring on July 12, 2009.

e. In the spring of 2010, a client of Licensee witnessed him exiting his office visibly impaired. Licensee's speech and coordination were impaired, he was stumbling, and he had to push himself against a wall to stand up. Licensee had been seeing clients throughout the work day. A colleague of Licensee's observed him return to his office, retrieve a bottle of vodka, and bring the bottle of vodka to the dumpster. Two colleagues confronted Licensee the next day. Licensee admitted the vodka bottle was his, that he had been drinking in his office, and that he had been impaired while at his work site.

REGULATIONS

3. The Board views Licensee's practices as described in paragraph 2 above to be in violation of statutes and rules enforced by the Board and constitutes a reasonable basis in law and fact to justify the disciplinary action provided for in this Stipulation and Consent Order. Licensee agrees that the conduct cited above constitutes the following violations:

a. Engaging in the practice of marriage and family therapy in a manner harmful or dangerous to a client or to the public, in violation of Minn. Stat. § 148B.37, subd. 1(1);

b. Violating a provision of sections 148B.29 to 148B.39 or one or more of the rules of the Board, in violation of Minn. Stat. § 148B.37, subd. 1(3);

c. Engaging in unprofessional or unethical conduct, in violation of the Board's Code of Ethics, pursuant to Minn. R. 5300.0350;

- d. Failing to act in accordance with the highest standards of professional integrity and competence, in violation of Minn. R. 5300.0350, subp. 4;
- e. Failing to recognize that there are other professional, technical, and administrative resources available to clients, and failing to make referrals to those resources when it is in the best interest of clients to be provided with alternative or complementary services, in violation of Minn. R. 5300.0350, subp. 4.F.;
- f. Practicing under the influence of alcohol, in violation of Minn. R. 5300.3050, subp. 4.K.;
- g. Engaging in unprofessional conduct, that is, violating those standards of professional behavior that have become established by consensus of the expert opinion of marriage and family therapists as reasonably necessary for the protection of the public interest, in violation of Minn. R. 5300.0350, subp. 4.S.;
- h. Failing to recognize the potentially influential position the therapist may have with respect to clients, and failing to avoid exploiting the trust and dependency of clients, in violation of Minn. R. 5300.0350, subp. 5.B.;
- i. Failing to make every effort to avoid dual relationships with clients that could impair the therapist's professional judgment or increase the risk of exploitation, in violation of Minn. R. 5300.0350, subp. 5.B.;
- j. Engaging in sexual harassment of a client, or in any verbal or physical behavior that is sexually seductive or sexually demeaning to the client, in violation of Minn. R. 5300.0350, subp. 5.F.;

k. Exploiting the professional relationship with a client in any manner for the therapist's emotional, financial, sexual, religious, political, or personal advantage or benefit, in violation of Minn. R. 5300.0350, subp. 5.G.;

l. Using any confidence of a client to the client's disadvantage, in violation of Minn. R. 5300.0350, subp. 5.H.;

m. Failing to terminate a client relationship when it is reasonably clear that the treatment no longer serves the client's needs or interests, in violation of Minn. R. 5300.0350, subp. 5.I.;

n. Providing services to a client when the therapist's objectivity or effectiveness was impaired, in violation of Minn. R. 5300.0350, subp. 5.J.; and

o. Failing to inform a client of a divergence of interests, values, attitudes, or biases between a client and the therapist that is sufficient to impair their professional relationship, in violation of Minn. R. 5300.0350, subp. 5.L.

REMEDY

4. Upon this stipulation and all the files, records, and proceedings herein, and without further notice or hearing, the Board hereby **SUSPENDS** Licensee's license, effective immediately. During the period of suspension, Licensee shall not practice marriage and family therapy in any manner, shall neither offer nor provide marriage and family therapy services of any kind within Minnesota, and shall not use the designation "licensed marriage and family therapist," "LMFT," or any other designation that implies that Licensee is eligible to practice marriage and family therapy in the State of Minnesota.

Licensee shall be suspended for a period of **one (1) year** from the date of this Order. The suspension shall be administratively removed after the one (1) year period, and Licensee's

license shall move into an immediate CONDITIONAL status. Licensee shall be allowed to petition for an unconditional license after two years from the date this Stipulation and Order is adopted by the Board. At the time of his petition, the burden of proof shall be upon Licensee to demonstrate by a preponderance of the evidence that he is capable of returning to the practice of marriage and family therapy with an unconditional license in a fit, competent, and ethical manner. During the period of suspension and prior to petitioning for an unconditional license, Licensee shall comply with the conditions set forth in paragraph 4.a through 4.m below:

a. ***Supervision of Licensee by Board-Approved Supervisor.*** At the conclusion of the one year suspension, Licensee shall practice marriage and family therapy only under the supervision of a board-approved supervisor. Licensee may petition for removal of this condition after two years from the date of this Stipulation. Licensee's supervisor must be approved in advance by the Complaint Panel from a list of at least three names Licensee shall submit to the Complaint Panel. Licensee shall cause each proposed supervisor to submit a curriculum vitae to the Board for the Complaint Panel's review prior to its approval of a supervisor.

The Complaint Panel reserves the right to reject all names submitted by Licensee. If the Complaint Panel rejects any names submitted, the Complaint Panel may require that Licensee submit additional names as described above, or the Complaint Panel may provide Licensee with the name of a supervisor. Licensee shall have no previous personal or professional relationship with the supervisor. Licensee shall not engage in the practice of marriage and family therapy until a supervisor has been approved by the Complaint Panel and retained by Licensee. Licensee shall meet with the supervisor no less than twice per month for a minimum of two hours per

session. The purpose of the meetings is to address and review issues that shall be contained within the supervisor's reports as follows:

b. ***Supervisor's Reports.*** The supervisor shall provide a report to the Complaint Panel every six months and at the time Licensee petitions to have the supervisory condition removed from his license. The first report is due six months from the date supervision begins, and all subsequent reports shall be submitted on the first day of the month in which they are due. Each report shall provide and/or address:

- 1) In the first report, evidence Licensee's supervisor has received and reviewed a copy of this Stipulation and Order;
- 2) Dates on which supervision took place with Licensee;
- 3) The method by which supervision was conducted;
- 4) A statement that all cases have been reviewed, a description of any problems discovered in the review, and the resolution of the problems;
- 5) The supervisor's opinion as to Licensee's ability to provide competent services;
- 6) Any other information the supervisor believes would assist the Board in its ultimate review of this matter; and
- 7) At the time Licensee petitions for removal of the supervisory condition, the supervisor's report shall include an assessment of Licensee's ability to conduct himself in a fit, competent, and ethical manner in the practice of marriage and family therapy as well as whether Licensee exhibits an acceptable comprehension and knowledge of ethical issues encountered in practice as well as the ability to apply this knowledge.

c. At the time Licensee petitions for removal of the supervisory condition, the burden of proof shall be upon Licensee to demonstrate by a preponderance of the evidence that he is capable of returning to the unsupervised practice of marriage and family therapy in a fit, competent, and ethical manner.

d. ***Professional Boundaries Course.*** Within 60 days of the date this Stipulation and Order is adopted by the Board, Licensee shall arrange to enroll in an individualized professional boundaries training course. The Complaint Panel will provide Licensee with a Board-approved professional. Licensee shall complete the professional boundaries course within two (2) years of the date this Stipulation and Order is adopted by the Board. All fees for the course shall be paid by Licensee. Successful completion of the boundaries course shall be determined by the Complaint Panel.

1) If the Complaint Panel and Licensee concur that there is sufficient reason for Licensee not to utilize the Board-approved professional, Licensee shall, within 30 days of such concurrence, submit to the Complaint Panel for approval a proposed instructor's curriculum vitae, and a syllabus that includes goals, objectives, assignments, projects, methods, and frequency of evaluation, etc., for an individualized professional boundaries training course with the proposed instructor.

e. ***Report on Boundaries Course From Licensee.*** Within 30 days of completing the professional boundaries course referenced above, Licensee shall submit a report to the Complaint Panel which provides and/or addresses:

1) The dates Licensee began and completed the boundaries training course;

2) A brief statement of the topics covered in the professional boundaries training course;

3) A detailed discussion of what Licensee has learned from the boundaries training course, including Licensee's comprehension and knowledge of boundary issues, as well as various ethical issues encountered in practice, and how this course will affect his practice in the future;

4) A detailed discussion of the violations that occurred within the circumstances described in the Facts section of this Stipulation and Order, including:

- (a) How Licensee came to violate professional boundaries;
- (b) The manner in which Licensee violated these boundaries;
- (c) The specific harm to each individual that resulted, and the potential harm to other individuals that could have resulted from Licensee's conduct; and
- (d) How Licensee now believes the violations could have been averted;

5) A detailed discussion of the specific ways this course may affect Licensee's practice if he is reinstated to unconditional licensure;

6) Licensee's reasons for believing he is capable of conducting himself in a fit, competent, and ethical manner in the practice of marriage and family therapy; and

7) Any other information Licensee believes would assist the Board in its ultimate review of this matter.

f. ***Report on Boundaries Course From Instructor.*** Within 60 days of completing the professional boundaries course referenced above, Licensee shall cause to be

submitted to the Complaint Panel a report from the instructor of the professional boundaries course. This report shall address:

- 1) The extent of Licensee's participation in the course; and
- 2) The instructor's assessment of Licensee's knowledge obtained from the course, comprehension of the material issues, and opinion as to Licensee's ethical fitness to engage in the practice of marriage and family therapy.

g. ***Psychological Evaluation.*** Licensee shall obtain a psychological evaluation within 60 days of the date this Stipulation and Order is adopted by the Board. The evaluation shall be performed by a licensed psychologist who has been approved in advance by the Complaint Panel. Licensee is responsible for the cost of the evaluation. The results of the evaluations shall be sent directly to the Board office and shall meet the following requirements:

- 1) Verification the evaluator has received a copy of this Stipulation and Order and any information that may be submitted by the Board;
- 2) A summary of the results of the evaluation and recommendations for treatment/therapy; and
- 3) Any other information the evaluator believes would assist the Board in its ultimate review of this matter.

h. ***Treating Therapist's Reports.*** Licensee shall receive therapeutic services if recommended by the psychological evaluator. Licensee shall comply with any recommendations for treatment by the therapist and shall be responsible for the cost of treatment. The therapist shall submit a report to the Complaint Panel at the time Licensee petitions for an unconditional license. The report shall provide and/or address:

1) A statement that the therapist has received and reviewed a copy of this Stipulation and Order;

2) An identification of a treatment plan devised specifically for Licensee. Any subsequent changes made in the treatment plan shall be identified in later reports;

3) A statement of the involvement between Licensee and the therapist, including dates, number, and frequency of meetings;

4) Licensee's therapeutic progress and compliance with the treatment plan;

5) The therapist's opinion as to Licensee's capacity to understand his professional role, the boundaries of that role, and his ability to distinguish between his personal and professional needs, identity, and behavior;

6) The therapist's opinion as to the need for continuing therapy;

7) Any other information the therapist believes would assist the Board in its ultimate review of this matter; and

8) An assessment of Licensee's ability to conduct himself in a fit, competent, and ethical manner in the practice of marriage and family therapy, and whether Licensee exhibits an acceptable comprehension and knowledge of ethical issues encountered in practice as well as the ability to apply this knowledge.

i. ***Chemical Dependency Evaluation.*** Licensee shall obtain a chemical dependency evaluation within 60 days of the date this Stipulation and Order is adopted by the Board. Licensee shall submit, or cause to be submitted, the credentials of the chemical dependency evaluator for review and preapproval by Board staff for purposes of this evaluation. Licensee is responsible for the costs of the evaluation. The results of the evaluation shall be sent

directly to the Board and must include a statement verifying the evaluator has reviewed this Stipulation and Consent Order. Licensee shall comply promptly with any recommendations for additional evaluation and treatment made by the chemical dependency evaluator.

j. ***Abstinence from Mood-Altering Chemicals.*** At all times while this Stipulation and Consent Order is effect, Licensee shall completely abstain from all controlled and/or abusable mood-altering chemicals, including alcohol, unless expressly prescribed in writing by a physician, dentist, or other authorized health care professional who is providing care and treatment to Licensee. Licensee shall report any unauthorized use of mood-altering chemicals and/or relapse with mood-altering chemicals, including alcohol, to the Board as soon as possible but in no event longer than 24 hours from the initial unauthorized use. If a physician, dentist, or other authorized health care professional prescribes controlled and/or abusable substances to Licensee, or when Licensee refills or is administered controlled and/or abusable substances, Licensee must inform the Board by telephone of the prescription and the condition being treated within 24 hours, and ~~she~~ shall ensure the Board receives written verification of the prescription and the condition being treated within three days. Exposure, use or ingestion of substances known to interfere with the toxicology screening process, including but not limited to certain foods, beverages, over-the-counter medications, and other products that contain poppy seeds, hempseeds, and ethyl alcohol, is not a defense to a positive toxicology screen. Examples include but are not limited to, nonalcoholic beer or wine; some desserts, salad dressings, soups and herbal remedies; and hand sanitizing and mouthwash products.

k. ***Participation in the Health Professional Services Program.*** If, at any time this Order is in effect, the Board directs Licensee to participate in the Health Professionals Services Program ("HPSP"), Licensee shall contact the HPSP at (651) 643-2120 within 14 days

of the date of the Board's directive to initiate enrollment in the program, and shall enter into a Participation Agreement with the HPSP within 60 days of the date of the Board's directive. Licensee is then required to comply with all terms of the Participation Agreement.

1. ***Self Reports.*** Licensee shall submit to the Board a report from Licensee himself every six months and at the time Licensee petitions to have the conditions removed from his license. Each report shall provide and address:

1) Licensee's sobriety, including the date Licensee last used mood-altering chemicals, including alcohol, and the circumstances surrounding any use while this Stipulation and Consent Order is in effect;

2) Licensee's treatment and participation in a chemical dependency rehabilitation program, including weekly attendance at a chemical dependency support group such as Alcoholics Anonymous ("AA"); evidence of participation shall include, but need not be limited to, attendance sheets on a form provided by the Board and that have been legibly signed or initialed and dated by a participant who attended the weekly meeting;

3) Licensee's physical and mental health status, treatment plan, medications, and compliance with treatment;

4) Licensee's work schedule;

5) Licensee's future plans in the practice of marriage and family therapy; and

6) Any other information Licensee believes would assist the Board in its ultimate review of this matter.

m. ***Random Alcohol and Drug Screens.*** At any time during the petition process, the Board may direct Licensee, without prior notice, to submit to laboratory hair, blood, and urine screenings to determine the presence or absence of alcohol or drugs. The Board may contact Licensee by telephone, letter, or through personal contact by an agent to direct him to

submit to the tests. Licensee shall provide the directed specimen, using a collection site and process approved by the Board, within two hours after he is contacted by the Board. Licensee agrees to abstain from substances known to interfere with the toxicology screening process, including but not limited to certain foods, beverages, over-the-counter medications, and other products that contain poppy seeds, hempseeds, and ethyl alcohol. Examples include but are not limited to, nonalcoholic beer or wine; some desserts, salad dressings, soups and herbal remedies; and hand sanitizing and mouthwash products. Licensee shall arrange with his employer for release from work for purposes of fulfilling the requirements of the laboratory screening. The specimens shall be handled through legal chain-of-custody methods and tested at a facility approved by the Board. The results of the screens shall be reported directly to the Board. Licensee is responsible for the cost of the screens.

5. If any due date required by this Stipulation and Order is not met, the Complaint Panel may fine Licensee \$100.00 per violation. Licensee shall pay the fine and correct the violation within five days after service on Licensee of a demand for payment and correction. If licensee fails to do so, the Complaint Panel may impose additional fines not to exceed \$500.00 per violation. The total of all fines may not exceed \$5,000.00. Licensee waives the right to seek review of the imposition of these fines under the Administrative Procedure Act, by *writ of certiorari* under Minn. Stat. § 480A.06, by application to the Board, or otherwise. Neither the imposition of fines nor correction of the violation will deprive the Board of the right to impose additional discipline based on the violation.

6. Licensee is responsible for all costs incurred as a result of compliance with this Stipulation and Order.

7. No condition imposed as a remedy by this Stipulation and Order, including conditions directly related to a restriction, shall be used as a continuing education activity for the purpose of renewal of Licensee's license to practice marriage and family therapy.

8. All reports referenced herein shall cover the entire reporting period and provide the bases upon which conclusions were drawn.

9. The Board or its authorized representatives shall have the right to discuss relevant issues and obtain records from any person with whom Licensee has contact as a result of his compliance with this Stipulation and Order or as a result of him being examined or obtaining treatment, counseling, or other assistance on his own initiative or otherwise. Licensee shall execute releases and provide any health record or other waivers necessary for submission of the reports referenced in this Stipulation and Order, to enable the Board to obtain the information it desires, and to authorize the testimony of those contacted by the Board in any proceeding related to this matter.

10. Licensee shall execute releases allowing the Board to exchange data related to this Stipulation and Order with Licensee's therapist and any other professional Licensee contacts in order to comply with this Order.

11. In the event Licensee resides or practices outside the State of Minnesota, Licensee shall promptly notify the Board in writing of the location of his residence and all work sites. Practice outside of Minnesota will not be credited toward any period of Licensee's conditional license in Minnesota unless Licensee demonstrates to the satisfaction of the Board that the practice in another jurisdiction conforms completely with Licensee's Minnesota license requirements to practice marriage and family therapy.

12. If Licensee shall fail, neglect, or refuse to fully comply with each of the terms, provisions, and conditions herein, the Complaint Panel shall schedule a hearing before the Board. The Complaint Panel shall mail Licensee a notice of the violation alleged by the Complaint Panel and of the time and place of the hearing. Licensee shall submit a response to the allegations at least three days prior to the hearing. If Licensee does not submit a timely response to the Board, the allegations may be deemed admitted.

At the hearing before the Board, the Complaint Panel and Licensee may submit affidavits made on personal knowledge and argument on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Order. Licensee waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

At the hearing the Board will determine whether to impose additional disciplinary action, including suspension or revocation of Licensee's license.

13. This Stipulation and Order shall not in any way limit or affect the authority of the Board to temporarily suspend Licensee's license under Minn. Stat. § 148.941, subd. 3, or to initiate contested case proceedings against Licensee on the basis of any act, conduct, or omission of Licensee justifying disciplinary action occurring before or after the date of this Stipulation and Order which is not related to the facts, circumstances or requirements referenced herein.

14. In the event the Board at its discretion does not approve this settlement or a lesser remedy than indicated in this settlement, then, and in that event, this stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced by either party to this stipulation, except that Licensee agrees that should the Board reject this stipulation and this case

proceeds to hearing, Licensee will assert no claim that the Board was prejudiced by its review and discussion of this stipulation or of any records relating to this matter.

15. Any appropriate court may, upon application of the Board, enter its decree enforcing the order of the Board.

16. Licensee has been advised by Board representatives that he may choose to be represented by legal counsel in this matter. Licensee is represented by Jennifer Speas, Esquire. The Complaint Panel is represented by Hans A. Anderson, Assistant Attorney General.

17. Licensee waives all formal hearings on this matter and all other procedures before the Board to which Licensee may be entitled under the Minnesota or United States constitutions, statutes, or rules and agrees that the order to be entered pursuant to the stipulation shall be the final order herein.

18. Licensee hereby knowingly and voluntarily waives any and all claims against the Board, the Minnesota Attorney General, the State of Minnesota and their agents, employees, and representatives which may otherwise be available to Licensee under the Americans With Disabilities Act or the Minnesota Human Rights Act relative to the action taken or authorized against Licensee's license to practice as a licensed marriage and family therapist under this stipulation.

19. Licensee hereby acknowledges that he has read, understands, and agrees to this stipulation and has freely and voluntarily signed the stipulation without threat or promise by the Board or any of its members, employees, or agents. When signing the stipulation, Licensee acknowledges he is fully aware the stipulation is not binding unless and until it is approved by the Board. The Board may either approve the Stipulation and Consent Order as proposed, approve the Stipulation and Consent Order subject to specified change, or reject it. If the

changes are acceptable to Licensee, the stipulation will then take effect and the order as modified will be issued. If the changes are unacceptable to Licensee or the Board rejects the stipulation, it will be of no effect except as specified herein.

20. This Stipulation and Consent Order constitutes a disciplinary action against Licensee.

21. This Stipulation and Consent Order is a public document and will be sent to all appropriate data banks.

22. This stipulation contains the entire agreement between the parties there being no other agreement of any kind, verbal or otherwise, which varies this stipulation.

LICENSEE

FOR THE COMPLAINT PANEL

Gary J. Brink LMFT
GARY J. BRINK, LMFT

Mark A. Flaten MS, LMFT
MARK FLATEN, MS, LMFT
Complaint Panel Chair

Dated: 7/17/13

Dated: 7/29/13

ORDER

Upon consideration of this Stipulation and all the files, records, and proceedings herein,
IT IS HEREBY ORDERED that the terms of this Stipulation are adopted and implemented by
the Board this 19 day of July, 2013.

MINNESOTA BOARD OF
MARRIAGE AND FAMILY THERAPY

Jennifer Mohlenhoff
JENNIFER MOHLENHOFF
Executive Director